

U.S. Serial No.: 10/608,899
Filed: June 27, 2003
Group Art Unit: 3738
Examiner: Javier G. Blanco
Atty. Docket No.: 22956-218 (MIT-5010)

REMARKS

The pending Office Action addresses and rejects claims 1-9 and 11-17. Reconsideration and allowance is respectfully requested in view of the following remarks.

Amendments to the Claims

Applicants amend claims 1 and 11 to replace the term "slot" with "opening." Support for this recitation can be found throughout the specification, at least at paragraph 0022 of the published application, and in FIGS. 1-4B. Claims 2 and 12 are amended to correspond to amended claims 1 and 11. No new matter is added.

Rejection Pursuant to 35 U.S.C. §102

The Examiner maintains the rejection of claims 1, 4-9, 11, 12, and 14-17 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2002/0072797 of Hays, which is now U.S. Patent No. 6,554,862. In response to Applicants' arguments, the Examiner argues that a slot is defined as a "groove or slit." While Applicants disagree, Applicants amend independent claims 1 and 11 to recite a graft fixation device (claim 1) or a kit that includes a graft fixation device (claim 11) having at least two sidewalls that are at least partially separated by a longitudinally oriented *opening* that extends from a proximal end along a substantial length of each sidewall and terminates at a position just proximal to the distal end. Hays does not teach or even suggest *openings* that separate the sidewalls and that extend from a proximal end and terminate just proximal to a distal end. Rather, as stated by the Examiner in the final Office Action, Hays defines a *groove*, and this groove "may extend substantially along or entirely along the length of the sidewall." Given that a groove and an opening have entirely different structures, claims 1 and 11, as well as claims 4-9, 12, and 14-17 which depend therefrom, distinguish over Hays and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. §103

The Examiner maintains the rejection of dependent claims 2 and 13 pursuant to 35 U.S.C. §103(a) as being obvious over Hays. The Examiner also maintains the rejection of dependent claim 3 pursuant to 35 U.S.C. §103(a) as being obvious over Hays in view of U.S. Patent No. 6,099,530 of Simonian. As noted above, Hays does not teach or even suggest an opening that extends from a proximal end and terminates just proximal to the distal end. Simonian does not

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remedy the deficiencies of Hays, as Simonian likewise does not teach or even suggest such an opening. Accordingly, claims 2, 3, and 13 distinguish over Hays and Simonian and represent allowable subject matter.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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